

June 11, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Transportation file no. **V-2540**
Proposed Ordinance no. **2008-0149**
Parcel no. **72023-0150**

LAKE WASHINGTON SCHOOL DISTRICT No. 414

Road Vacation Petition

Location: Portion of 228th Way Northeast

Petitioner: **Lake Washington School District No. 414**
c/o Livengood, Fitzgerald & Alskog, PLLC
Attention: David B. Johnston
P.O. Box 908
Kirkland, Washington 98083-0908
Telephone: (425) 822-9281

King County: Department of Transportation, Road Services Division
represented by Nicole Keller
201 South Jackson Street
Seattle, Washington 98104-3856
Telephone: (206) 296-3731
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

| | |
|---------------------------|---|
| Department's Preliminary: | Approve road vacation, waiving compensation |
| Department's Final: | Approve road vacation, waiving compensation |
| Examiner's: | Approve road vacation, waiving compensation |

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the Hearing Examiner for Item No. V-2540 was received by the Examiner on March 31, 2008.

PUBLIC HEARING:

After reviewing the Department's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2540 was convened by the Examiner on April 23, 2008, in the Hearing Examiner's Conference Room, 400 Yesler Way, Seattle, WA 98104. After open session, the hearing was continued administratively for receipt of the affidavit of publication and documentation of the recording of a necessary drainage easement and a quit claim deed (see exhibit nos. 44 and 45). The hearing record closed on May 19, 2008. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

| | |
|------------------------------|--------------------------------|
| Road name and location: | Portion of 228th Way Northeast |
| Right of way classification: | C Class |
| Area: | 2,081 square feet |
| Compensation: | Recommended to be waived |

2. Notice of hearing on the Department's report was given as required by law, and a hearing on the report was conducted by the Examiner on behalf of the Metropolitan King County Council.
3. Except as provided herein, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department's report to the Examiner for the April 23, 2008, public hearing and the statement of facts contained in Proposed Ordinance No. 2008-0149. The Department's report will be attached to those copies of this report and recommendation that are submitted to the County Council.
4. The subject right-of-way segment is the east bulb portion of a cul de sac terminus of 228th Way Northeast, north of Northeast 94th Way, in the *Redmond Ridge* area. The subject cul de sac bulb portion is no longer necessary as a road turnaround area, as 228th Way Northeast is being extended further northerly as part of the redesigned development of a Lake Washington School District elementary school, and a deeded replacement turnaround has been provided a very short distance to the north. The vacated area is to be used as part of a sports field. (See exhibit nos. 26 and 45)
5. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as exhibit nos. 7 and 26-29.
6. The subject right-of-way segment is currently opened for public use, but is no longer useful as part of the public road system.
 - A. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes. (An easement necessary for maintenance of storm drainage facilities within the portion has been recorded. See exhibit no. 44.)

- B. Vacation of the right-of-way would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area.
7. No public funds were expended in the acquisition of the right-of-way. KCC 14.40.020.D allows a compensation waiver for public agencies, at the Council's discretion.¹ KCDOT Road Services recommends that the compensation be waived in this case.

CONCLUSIONS:

1. The right-of-way segment subject to this petition is not useful as part of the King County road system, and the public will be benefited by its vacation.
2. KCC 14.40.020.D's public agency compensation waiver apparently recognizes a public benefit from waiving compensation in the spirit of intergovernmental cooperation. Particularly as no public funds were expended in acquisition of the right-of-way, and nothing in the record suggests that a waiver should not be granted in this case, the Examiner shall second KCDOT's recommendation of waiver.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2008-0149 to vacate the subject road right-of-way and WAIVE compensation pursuant to KCC 14.40.020.D.

RECOMMENDED June 10, 2008.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **June 25, 2008**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **July 2, 2008**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office

¹ "When a road is vacated for a governmental agency, compensation shall be in accordance with the classification of the road, except that some or all of the compensation may be waived at the discretion of the council." [KCC 14.40.020.D]

of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE APRIL 23, 2008 PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION, ROAD SERVICES DIVISION FILE NO. V-2540.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Nicole Keller, representing the Department and David Johnston representing the Petitioner.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Report to the Hearing Examiner for the April 23, 2008 hearing, with 15 attachments.
- Exhibit No. 2 Petition transmittal letter, dated October 7, 2005, to King County Department of Transportation (KCDOT), from Clerk of the Council
- Exhibit No. 3 Petition for vacation cover letter, dated October 4, 2005, stating reason for request.
- Exhibit No. 4 Petition for vacation of a County road including legal descriptions of Petitioner's property and maps.
- Exhibit No. 5 Copy of filing fee, check no. 373399, in the amount of \$100.00
- Exhibit No. 6 Receipt no. 00752 for filing fee
- Exhibit No. 7 Vicinity map
- Exhibit No. 8 King County Plat Map of Redmond Ridge Division No. 7
- Exhibit No. 9 Map depicting vacation area
- Exhibit No. 10 Road Log for file no. L9930008, Redmond Ridge Division No. 7 for 228th Way Northeast
- Exhibit No. 11 Revised legal description of vacation area, i.e. removal of the small portion of road in private alley
- Exhibit No. 12 Petitioner letter, dated May 2, 2005, stating reason for revision
- Exhibit No. 13 Revised Petition for vacation of a County road, vacation area includes entire bulb and 228th Way Northeast to the Northeast 94th Way intersection
- Exhibit No. 14 Map depicting revised vacation area
- Exhibit No. 15 Letter from KCDOT to Petitioner, dated August 30, 2006, informing them of "On Hold" status of petition pending receipt of revised petition
- Exhibit No. 16 Follow up to August 30, 2008 letter, reminding Petitioner of "On Hold" status and informing them of imminent closure, dated December 14, 2006
- Exhibit No. 17 Petition withdrawal letter, dated January 5, 2007
- Exhibit No. 18 Letter from KCDOT to Petitioner, dated January 30, 2007, confirming petition withdrawal and file closure

- Exhibit No. 19 Letter from KCDOT to Clerk of the Council regarding petition withdrawal, dated January 30, 2007
- Exhibit No. 20 Cover letter to Revised Petition for vacation of a County road letter from Petitioners to KCDOT, dated March 16, 2007
- Exhibit No. 21 Revised petition for vacation of a County road
- Exhibit No. 22 Letter to Clerk of the Council from KCDOT, dated April 18, 2007, requesting re-opening of file V-2540.
- Exhibit No. 23 Letter to Clerk of the Council from KCDOT, dated May 14, 2007, requesting re-opening of file V-2540.
- Exhibit No. 24 Letter from Clerk of the Council to KCDOT, dated May 18, 2007, informing them that Clerk's office never closed the file
- Exhibit No. 25 Survey and Map of final vacation area, King County recording no. 20071105000158
- Exhibit No. 26 Map depicting final vacation area
- Exhibit No. 27 Aerial maps of 228th Way Northeast pre-construction
- Exhibit No. 28 Aerial maps of 228th Way Northeast post-construction
- Exhibit No. 29 Aerial map depicting final vacation area
- Exhibit No. 30 Letter from KCDOT to Petitioner, dated July 12, 2007, noting recommendation of approval and requesting survey and signed deed
- Exhibit No. 31 Recommendation letter from KCDOT to KC Council, dated July 10, 2007
- Exhibit No. 32 Petitioner letter requesting extension of time to submit the quit claim deed, dated September 5, 2007
- Exhibit No. 33 Letter from KCDOT to Petitioner granting extension of time to submit quit claim deed, dated September 20, 2007
- Exhibit No. 34 Cover letter for quit claim deed, dated November 7, 2007
- Exhibit No. 35 Survey and map of the proposed turnaround, King County recording no. 20070907001464
- Exhibit No. 36 Unrecorded copy of the quit claim deed
- Exhibit No. 37 Memorandum from KCDOT to KC Property Services (KCPS), dated November 28, 2007, requesting review and approval of the quit claim deed
- Exhibit No. 38 Email from KCPS approving the quit claim deed, dated January 10, 2008
- Exhibit No. 39 Proposed Ordinance transmittal letter from KCDOT to KC Council, dated March 12, 2008
- Exhibit No. 40 Proposed Ordinance 2008-0149
- Exhibit No. 41 Fiscal Note
- Exhibit No. 42 Affidavit of Posting, dated April 23, 2008
- Exhibit No. 43 Affidavit of Publication, dated May 19, 2008
- Exhibit No. 44 Drainage Easement, received May 13, 2008
- Exhibit No. 45 Quit Claim Deed, received May 13, 2008

PTD:vsm

V-2540 RPT